

AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/681,731

Filing Date: October 8, 2003

Title: Transcutaneous Delivery Means

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REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on 7/14/2005, and the references cited therewith.

No claims are amended, cancelled or added herein. Accordingly, claims 48-50, 52-57, 59, 60 and 64-68 are pending.

In paragraph 2 of the office action, the examiner rejected claims 48-50, 52-57, 59, 60 and 64-68 under 35 USC 102(e) as being anticipated by USP 6699218 ("Flaherty et al."). Applicant notes that the present application is a divisional of 10/037902 (the Flaherty et al. Application), which issued as USP 6699218 (the Flaherty et al. Patent). This application was filed as a divisional in response to the restriction requirement filed in the Flaherty et al. Application. Accordingly, the Flaherty et al. Patent may not be cited as prior art to the present application and the rejection of claims 48-50, 52-57, 59, 60 and 64-68 under 102(e) as being unpatentable over the Flaherty et al. Application is improper and should be withdrawn.

In paragraph 3 of the office action, the examiner rejected claims 48-50, 52-57, 59, 60 and 64-68 under 35 USC 102(e) as being anticipated by USP 6685674 ("Douglas et al."). In paragraph 4 of the office action, the examiner rejected claims 48-50, 52-57, 59, 60 and 64-68 under 35 USC 102(e) as being anticipated by USP 5968011 ("Larsen et al.").

In response, applicant notes that the present invention, as set forth in claim 48, is directed to a device for delivering fluid to a patient comprising, among other things, "a housing defining a reservoir." That is, there is a reservoir contained within the housing of the device. By contrast, neither Douglas et al. nor Larsen et al. teach or suggest a fluid delivery device comprising a housing defining a reservoir. The devices of Douglas et al. and Larsen et al. are directed to so-called "infusion sets" and, as such, are intended to be coupled to an external fluid source. They do not comprise internal reservoirs. Specifically, nothing in the specification of Douglas et al. teaches or suggests that the housing 40 may contain a reservoir. Similarly, nothing in the specification of Larsen et al. teaches or suggests that the subcutaneous injection set may comprise a reservoir. In fact, applicant was unable to find the term "reservoir" anywhere in the specification of either Douglas et al. or Larsen et al. For this reason alone, applicant submits that

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the rejections of claim 48 under 35 USC 102(e) as being anticipated by Douglas et al. and/or Larsen et al. are improper and should be withdrawn. Moreover, since claims 49-50, 52-57, 59, 60 and 64-68 depend variously from claim 48, the rejections of those claims under 35 USC 102(e) as being anticipated by Douglas et al. and/or Larsen et al. are improper and should be withdrawn.

In paragraph 5 of the office action, the examiner rejected claims 48-50, 52-57, 59, 60 and 64-68 under the judicially created doctrine of double patenting over claims 1-40 of Flaherty et al. In response, applicant notes that the present application was filed as a divisional application of the Flaherty et al. Patent Application pursuant to and consonant with a restriction requirement dated 02/06/2003 in the Flaherty et al. Patent Application. The pending claims read on species F in that restriction requirement. Accordingly, the double-patenting rejection is improper and should be withdrawn (See, MPEP 806.04(h)).

Conclusion

In view of the foregoing, applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (781-457-4717) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 503188

Respectfully submitted,

Date

1/17/06

By



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